IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1511 OF 2002

1. The Principal Secretary
Higher & Technical Education,
Mantralaya, Mumbai - 400 032.

2. The Director of Education
(Higher Education)
Maharashtra State, Pune-1. .. Petitioners

Versus

1. Dr. Vivek Vishwanath Rane
Professor & Head of Department
of Mathematics,
Institute of Science, Mumbai.

2. Dr. (Mrs.) N.D. Pandit,
then I/C Director,
Institute of Science,
Mumbai - 400 032. .. Respondents

Mr.S.R. Nargolkar, A.G.P. for the Petitioners.

Mr.P.M. Shah for Respondent No.1.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 30TH JUNE 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. This petition is filed by the Principal Secretary, Higher & Technical Education and Director of Education, Higher Education of State of Maharashtra to challenge the order dated 18th January 2002 passed by the Maharashtra Administrative Tribunal allowing O.A.

No.1079 of 2001 filed by Respondent No.1 herein. Respondent No.2 to this petition is the then in-charge Director of the Institute of Science when this petition was filed. The Petition concerns the question as to who should officiate as Director of Institute of Science until the regular Director is selected.

2. The short facts leading to the petition is are:

. One Dr.Suryavanshi was the Director of the Institute of Science in Mumbai. He was appointed as the Vice Chancellor of the University at Nanded. On his appointment, the Respondent No.1, who was the seniormost in the Institute, should have been appointed as the officiating Director. In his place, one Dr.Salunke was given the charge on 14th March 2000. This led the Respondent No.1 to file O.A. No.205 of 2000 to the Administrative Tribunal. The Administrative Tribunal received the reply filed on behalf of the Government. It looked into the report given by the Director of Education. The report showed the seniority of professors as follows:-

. (1) Dr.A.P. Sathe

. (2) Dr.V.V. Rane

. (3) Dr.V.V. Khole

. (4) Dr.M.M. Salunkhe

Dr.Sathe had expressed his reluctance for administrative work and Dr.Khole was Officer on Official Duty in Mantralaya. It was therefore seen that Respondent No.1 - Dr. Rane was the seniormost. He has an excellent academic record. Seniority though not necessarily a predominant factor is an important aspect to be considered while giving the charge of the officiating capacity, particularly where there are no rules or administrative instructions to the contrary. Considering these aspects, the Tribunal passed an order that until the post of Director, Institute of Science is filled by nomination or by regular promotion, as the case may be, the Government will take steps to fill up the post by temporary promotion as per the recruitment rules from amongst those who are within the zone of consideration.

3. This order passed on 5th May 2000 led to the appointment of Respondent No.1 on 14th June 2000 as officiating Director. The order stated that he was appointed in pursuance to the order of the Administrative Tribunal on an officiating basis as the Director. The order further stated that it was for one

year or until further orders to be issued by the Government whichever would be earlier.

4. It has so transpired that after the expiry of one year from the issuance of this order, the Government discontinued Dr.Rane from this post and issued another order on 31st August 2001. This order stated that during the period of one year when Respondent No.1 was holding the charge, the educational atmosphere in the institute did not remain conducive one and the tenure became extremely controversial. It is therefore from the point of view of the interest of the students that the charge was directed to be handed over to Dr. (Mrs.) N.D. Pandit, Principal, Elphinston College, Mumbai on a temporary basis. This order led to Respondent No.1 filing a second application being O.A. No.1079 of 2001.

5. The Petitioner herein resisted this O.A. by filing an affidavit of Dr. (Smt.) Pandit - Respondent No.2 herein, to which a rejoinder was filed by Respondent No.1. The Tribunal, after hearing the parties, noted that the post of Director was to be filled either by promotion or by nomination under the relevant recruitment rules. Until that regular appointment was made, a temporary promotion of an eligible and suitable person was to be made. That was

directed in the order on the original application which was decided earlier. In fact, the Respondent No.1 was appointed accordingly. The Tribunal noted that the restrictive period of one year under that order was not warranted in the teeth of the order dated 5th May 2000. Having considered all these factors, the Tribunal felt that the action taken against the Respondent No.1 was a punitive one. The Tribunal noted that to call a tenure of an officer extremely controversial would be stigmatic. In the affidavit in reply of Smt. Pandit, it was stated that there were complaints of staff members and Dr.Rane's behaviour was unbecoming and he was using abusive language. The Tribunal did not find any substance in the contention taken by the Petitioner State and, therefore, the order was interfered. It is this order which is challenged in the present petition. It was admitted and the impugned order passed by the Tribunal has been stayed.

6. Mr.Nargolkar, learned A.G.P. for the State, submitted that during the tenure of one year of Respondent No.1, an untoward incident has taken place on 23rd March 2001. That was an incident arising out of alleged abusive language used by Respondent No.1 to an employee belonging to a scheduled caste. This complaint was pending investigation and therefore amongst other

reasons, the Government thought it proper to discontinue Respondent No.1 and to hand over charge to Dr. (Mrs.) Pandit. Inasmuch as this was an incident of abusing an employee belonging to a scheduled caste, it led to a prosecution of Respondent No.1 under the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act"). Mr.Shah, learned counsel for Respondent No.1, produced the orders passed by the Special Judge conducting the trials under this Act as also the order passed by the Sessions Court in Criminal Revision filed by Respondent No.1 to challenge his prosecution under section 294 of I.P.C. As far as the prosecution under the Atrocities Act being Special Case No.6 of 2003 was concerned, the learned Judge noted that the alleged incident had taken place inside the cabin of Respondent No.1, and assuming that it had taken place it was not an incident in public view and, therefore, the court held that there was no occasion and no case of commission of crime under section 3(1)(x) and (xv) read with section 3(2)(vii) of the Atrocities Act. The Respondent No.1 was therefore discharged from those charges.

7. With respect to the charge under section 294 of I.P.C., it was noted by the learned Sessions Judge that the aforesaid incident was supposed to be of using

abusive
language by Respondent No.1 against the complainant.

Respondent No.1 undoubtedly had denied that any such incident had taken place. The learned Judge noted that Respondent No.1 was a professor and Head of the Department of Mathematics in the Institute of Science. He was in his cabin which was exclusively allotted to him. The learned Sessions Judge noted that the Respondent No.1 had been discharged from the prosecution under the Atrocities Act and held that the prosecution under I.P.C. was bad since the charge sheet had been filed belatedly and beyond the limitation. The learned Sessions Judge therefore discharged the Respondent No.1 from the offence under section 294 of I.P.C.

8. Mr.Shah therefore submitted that this was the only basis against Respondent No.1 leading to his discontinuation in August 2001. The statements which were made by Dr. (Mrs.) Pandit in her affidavit were denied by Respondent No.1 by filing an affidavit in rejoinder. None of the statements or allegations were made good by producing any document in support. Inasmuch as this affidavit in reply and rejoinder are referred in the impugned order, Mr.Nargolkar referred to the same. They are not produced on the record of the

petition, yet we went through those affidavits and we noted that this is entirely a case of making certain allegations without any supporting material. In the affidavit in rejoinder of Dr.Rane, he has stated that many of the alleged discrepancies have taken place because there was no Registrar appointed in the Institute of Science during that entire period. He has in fact alleged malafides against some of the functionaries in the institute who he claimed were after him, and he was given no opportunity to explain these allegations. Mr.Nargolkar stated across the bar that an enquiry was started some three years before, but Mr.Shah pointed out that there is no progress therein at all during this period. None of these documents are placed on record. In any case, there is no supporting material produced by Dr. (Mrs.) Pandit in her affidavit and which could be said to have been placed before the Tribunal. In the circumstances, the Tribunal could not be faulted for coming to the conclusion that it was wrong on the part of the Government to say that the tenure was extremely controversial. The Tribunal therefore held that it was a punitive action and therefore interfered with the impugned decision of the State Government.

9. Mr.Nargolkar submitted that Respondent No.1 was

only in an officiating capacity and if the Government had some material not to continue him any further, the Government was within its rights. Assuming that only one such incident had taken place at that particular point of time, the Government took the decision in the interest of the institute and asked Respondent No.1 to hand over charge. He submitted that this court should not interfere therewith.

10. On a query to the counsel appearing for both the parties, we learnt that as stated above, the initial charge was given to Dr. (Mrs.) Pandit and thereafter to one Dr.Salunkhe and lastly to Dr. (Mrs.) Bapat. Mrs.Bapat is retiring today itself. Since this fact was noted yesterday during the course of arguments, we asked Mr.Nargolkar to take instructions particularly because, in the meanwhile, Respondent No.1 had been exonerated of the charges which were levelled against him. There is no dispute that Respondent No.1 is the seniormost professor amongst various professors working in various Institutes of Science under the State Government at Mumbai, Nagpur and Aurangabad. Unfortunately enough, the State has declined to make any statement to that effect making it necessary for this court to pass the present order.

11. Considering the totality of circumstances, although it is an officiating post which the Respondent No.1 is claiming, in the tenure of a teacher it does have some significance. As we have noted above, Respondent No.1 is the seniormost professor in the institute with good academic record. All others are junior to him. There was perhaps the above referred one incident from which he has been exonerated. The regular appointment is yet to be made. This being the position, as per the normal rule there is no reason why Respondent No.1 should not have been appointed in the officiating capacity and there was no reason why, when one order was passed by the Tribunal earlier, his officiation should have been discontinued. In any case, we find that the order passed by the Tribunal on the second occasion is now further fortified in view of the exoneration of Respondent No.1 in the subsequent period.

12. In the circumstances, we do not find any merit in the petition of the State. The petition stands dismissed. We direct the Petitioner - State Government to hand over the charge of the post of Director of Institute of Science on an officiating basis to Respondent No.1 which he will continue to hold until regular selection is made by the M.P.S.C.

13. We had asked Mr.Nargolkar as to when the post will be filled by Public Service Commission on regular basis and whether time frame can be provided. He stated that it will take its own time. Thus, the regular appointment is not being made for last more than 5 years. On the other hand, the seniormost professor is sought to be denied even the officiation on some grounds which are not being established all this time. This being the position, the present order becomes necessary. Interim relief stands vacated since the petition is dismissed.

14. Mr.Nargolkar applies that the interim relief be continued for a further period of 6 weeks. In the circumstances as noted above, somebody has got to be appointed as in-charge of the Institute of Science today itself. We had asked Mr.Nargolkar as to who has been considered by the State Government for officiation. He stated that no such decision has been taken. This being the position, we decline to extend the interim order which was passed earlier. It is all the more necessary that the officiating arrangement must be made and there is no reason why Respondent No.1 should not be so appointed since the Government’s petition is being rejected. The request of Mr.Nargolkar is rejected.

15. All parties will act on a copy of this order authenticated by the Personal Secretary of this Court.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)